IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 23331 of 2004

Between:

M.A. Aziz, S/o. Multhan Sab,
Khatna Village, Bidhar Taluk and District,
Karnataka State.

..... PETITIONER

AND

1 The Prohibition & Excise Inspector, Narayankhed, Medak District.
2 The Deputy Commissioner of Prohibition & Excise, Nizamabad

Division, Nizamabad.
3 The Commissioner of Prohibition & Excise, Nampally, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order, or direction mostly one which is in the nature of a Writ of MANDAMUS declaring the proceedings C.R.No.B7/1238/96 Dated 16-11-1999 of the 2nd Respondent and the Consequential confiscation of lorry bearing No. MYI 3224 belonging to the Petitioner by the 1st Respondent on 2-7-2004 as well as the order dated 27-11-2004 in C.R.No. 14262/2004/CPE/B4 of the 3rd respondent as illegal, irregular, arbitrary, unjustified, unconstitutional and unsustainable and set aside the said proceedings holding that the lorry bearing No. MYI 3224 is not liable for confiscation.

Counsel for the Petitioner: MR.P.VEERA REDDY

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court at the admission stage made the following ORDER:

Petitioner is the owner of a lorry bearing No. MYI 3224. It was seized on 16.06.1999 by the Prohibition & Excise Inspector, Narayankhed, the first respondent, on the ground that it was used in transporting illicit liquor from the State of Karnataka. Proceedings were initiated before the Deputy Commissioner of Prohibition & Excise, Nizamabad, the second respondent, under the relevant provisions of the A.P. Excise Act. Through an order dated 16.11.1999, the second respondent directed confiscation of the vehicle. Aggrieved thereby, the petitioner preferred an appeal before the third respondent. The appeal was dismissed through order dated 27.11.2004. The same is challenged in this writ petition.

Heard learned counsel for the petitioner and learned Government Pleader for Prohibition & Excise.

The main contention urged on behalf of the petitioner is that he was not issued any notice of hearing in the proceedings before the second respondent. It is stated that though his address was very much available with respondents 1 and 2, the notice is said to have been served through publication in a Telugu daily having circulation in the State of Andhra Pradesh, whereas he is a resident of Gulbarga district in the State of Karnataka.

From a perusal of the order passed by the second respondent, it is evident that a show cause notice sent to the petitioner through the Registered post was returned unserved and therefore the notice was published in a Telugu daily

(vartha) on 26.10.1999.

The proceedings related to the confiscation of the vehicle of the petitioner. It is not as if respondents 1 and 2 were not aware of the particulars of the petitioner. In fact, the petitioner filed an application seeking release of the vehicle. If the notice sent through the registered post was not served, necessary steps ought to have been taken by ascertaining the address. Publication of the notice in a Telugu daily, having circulation in the State of Andhra Pradesh, in relation to a person, who is admittedly a resident of Karnataka state, cannot be said to be an appropriate step. The whole proceedings before the second respondent have become virtually one-sided and *ex parte*.

The petitioner specifically urged this ground, before the third respondent. The appeal was rejected mainly on the ground of limitation. In view of the fact that the very livelihood of the petitioner is involved, this Court is of the view that an opportunity needs to be given to the petitioner.

For the foregoing reasons, the writ petition is allowed and the order dated 16.11.1999 passed by the second respondent and the one dated 27.11.2004 passed by the third respondent are set aside. The matter is remanded to the second respondent for fresh adjudication. Irrespective of the issuance of any notice to the petitioner, he shall appear before the first respondent on 24.01.2005. The further proceedings before him shall take depending on the orders and directions that may be issued by the second respondent. Pending disposal of the proceedings before the second respondent, the custody of the vehicle shall be with the petitioner on his undertaking that he shall not alienate the same nor create any third party rights in it and shall produce the same as and when directed. There shall be no order as to costs.

30.12.2004

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To

1 The Prohibition & Excise Inspector, Narayankhed, Medak District.
2 The Deputy Commissioner of Prohibition & Excise, Nizamabad Division,

Nizamabad.
3 The Commissioner of Prohibition & Excise, Nampally, Hyderabad.

4 2CCs to the G.P. for Prohibition and Excise, High Court Buildings,

Hyderabad. (OUT).

5 2 CD copies.